

United States
↓
Circuit Court of Appeals
For the Ninth Circuit.

HARRY W. ELLIOTT,

Plaintiff in Error,

vs.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

FILED

MAR 25 1922

F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

HARRY W. ELLIOTT,

Plaintiff in Error,

vs.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer	12
Assignment of Errors.....	35
Bond on Writ of Error.....	38
Certificate of Clerk U. S. District Court to Judgment-roll	26
Certificate of Clerk U. S. District Court to Transcript of Record.....	41
Citation on Writ of Error.....	44
Complaint for Damages for False Imprison- ment	1
Demurrer	10
Judgment on Verdict.....	25
Marshal's Return on Summons.....	9
Minutes of Court—October 18, 1920—Order Overruling Demurrer.....	12
Minutes of Court—November 21, 1921—Order for Judgment, etc.....	27
Minutes of Court—December 19, 1921—Order Denying Petition for New Trial.....	34
Names and Addresses of Attorneys of Record..	1
Order Allowing Writ of Error.....	37
Order Denying Petition for New Trial.....	34
Order for Judgment, etc.....	27

Index.	Page
Order Overruling Demurrer.....	12
Petition for New Trial.....	28
Petition for Writ of Error.....	34
Praecipe for Transcript of Record on Writ of Error	39
Return to Writ of Error.....	44
Summons	7
Verdict	25
Writ of Error.....	42

Names and Addresses of Attorneys of Record.

CHALMER MUNDAY, Esq., and ALBERT PICKARD, Esq., Thomas Clunie Bldg., 519 California St., San Francisco, Calif.

Attorneys for Plaintiff.

J. G. DE FOREST, Esq., Foxcroft Bldg., San Francisco, Calif., and Messrs. CREED, JONES & DALL, Balfour Bldg., San Francisco, Calif.,
Attorneys for Defendant.

In the District Court of the United States for the
Southern Division of the Northern District of
California.

(No. 16,439.)

HARRY W. ELLIOTT,

Plaintiff,

vs.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Defendant.

Complaint for Damages for False Imprisonment.

Now comes the above-named plaintiff and complains of the above-named defendant, and for cause of action alleges:

I.

That at all the times herein mentioned plaintiff was and now is a citizen of the United States of

\

America and a citizen of the State of California, and is now a resident of the City of Los Angeles, County of Los Angeles, State of California.

II.

That at all times herein mentioned Richard R. Veale was and now is the duly elected, qualified and acting sheriff of the County of Contra Costa, State of California.

III

That at all times mentioned herein, said defendant American Surety Company of New York was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business in the City of New York, State of New York, and duly authorized to do business in the State of California.

IV.

That the said matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars [1*] in this: damages suffered by plaintiff herein in the sum of Thirty Thousand (\$30,000.00) Dollars by reason of the acts of Richard R. Veale as set forth herein.

V.

That in qualifying as such sheriff said Richard R. Veale on or about the 16th day of November, 1918, caused to be recorded in the office of the

*Page-number appearing at foot of page of original certified Transcript of Record.

County Recorder of said County of Contra Costa, State of California, in Volume Six of the official bonds, page 489 thereof, and then filed in the county clerk's office of said county, his official bond as such sheriff in the penal sum of Thirty Thousand (\$30,000.00) Dollars, approved by a Judge of the Superior Court of said county, for which payment well and truly to be made said Richard R. Veale and said defendant American Surety Company of New York, a corporation, jointly and severally, bound themselves, their heirs, executors and successors; that said Richard R. Veale signed and executed said bond as principal and said defendant American Surety Company of New York, a corporation, signed and executed said bond as surety therein; that said bond was conditioned; that if the said Richard R. Veale shall well, truly and faithfully perform all official duties required of him by law and all such additional duties as may hereafter be imposed on him as such officer by any law of the State of California, then the above obligation to be void, otherwise to remain in full force and virtue.

VI.

That thereafter and on the 6th day of January, 1919, said Richard R. Veale duly entered upon the duties of his said office and ever since said 6th day of January, 1919, continued and at the present time continues to exercise the same.

VII.

That thereafter, according to plaintiff's information and belief, a felony, to wit, murder, was committed on or about [2] the 9th day of September, 1919, in the town of Pittsburg, County of Contra Costa, State of California, which fact, according to plaintiff's information and belief, was immediately communicated and made known to said Richard R. Veale as such sheriff; and thereafter and on the 17th day of September, 1919, at Antioch, in the County of Contra Costa, State of California, the said Richard R. Veale as such sheriff informed said plaintiff that he, the said Richard R. Veale as such sheriff, had reasonable cause to believe that said plaintiff had committed the same, and immediately thereafter said Richard R. Veale as such sheriff by the use of force and in the presence of divers and sundry good people arrested said plaintiff and by said force then and there compelled said plaintiff in the presence of divers and sundry good people to go with him as such sheriff to the county jail in the City of Martinez, County of Costa, State of California, and did then and there as such sheriff cause said plaintiff to be incarcerated and detained therein on a purported charge of murder; that immediately upon said arrest said plaintiff protested his innocence and informed said Richard R. Veale as such sheriff that he was not the person wanted for said charge, that he was not in the town of Pittsburg, County of Contra Costa, State of Cali-

fornia, on said 9th day of September, 1919, at the time when said murder was committed, but was on said day, at the time said murder was committed, in the City of San Francisco, State of California, that he was not guilty of murder or any other felony committed on said 9th day of September, 1919, or on any other day in the town of Pittsburg, County of Contra Costa, State of California, or in any other town or place; that said Richard R. Veale as such sheriff then and there forcibly kept said plaintiff in his custody and so detained, restrained, imprisoned and deprived said plaintiff of his liberty for the space of twelve (12) days; that during said twelve (12) days and at all [3] other times, said Richard R. Veale as such sheriff failed, refused and neglected to release said defendant either with or without bail; that during the period of time from the 17th day of September, 1919, until the 24th day of September, 1919, said Richard R. Veale as such sheriff failed, refused and neglected to take plaintiff before a magistrate as required by law; that on said 24th day of September, 1919, said Richard R. Veale as such sheriff took plaintiff before a committing magistrate and caused an information to be filed against said plaintiff and that said plaintiff was thereupon held in the custody of said Richard R. Veale as such sheriff and detained, restrained, imprisoned, forcibly kept, and deprived of his liberty until the 29th day of September, 1919, on which said 29th day of September, 1919, said

plaintiff was discharged from custody by order of James Fitzgerald, Justice of the Peace, of the Sixth Township, County of Contra Costa, State of California, on the ground that there was not sufficient evidence to hold said plaintiff for said crime of murder; that said crime of murder was not committed, or claimed to have been committed, in the presence of said Richard R. Veale as such sheriff so arresting and imprisoning as aforesaid.

VIII.

That by reason of such imprisonment and restraint of his liberty as aforesaid, said plaintiff was injured in his good name and reputation and subjected to shame, disgrace, and humiliation before the citizens of said County of Contra Costa, State of California, and other counties in said state, and among his friends and acquaintances, and suffered greatly in mind and body by reason of the shame, disgrace and humiliation of said arrest and imprisonment as aforesaid.

IX.

That by reason of the premises the plaintiff has been damaged in the sum of Thirty Thousand (\$30,000.00) Dollars. [4]

WHEREFORE, plaintiff prays judgment against said defendant American Surety Company of New York, a corporation, for the sum of Thirty Thousand (\$30,000.00) Dollars; and for costs of suit.

JOSEPH SCOTT,
Attorney for Plaintiff.

State of California,
County of Los Angeles,—ss.

Harry W. Elliott, being duly sworn, deposes and says he is the plaintiff in the above-entitled action; that he has read the foregoing complaint for damages for false imprisonment and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true.

HARRY W. ELLIOTT.

Subscribed and sworn to before me this 11th day of September, 1920.

[Seal]

KATE McCANN,
Notary Public in and for Los Angeles County, Cal.

[Endorsed]: Filed Sept. 13, 1920. Walter B. Maling, Clerk. [5]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

HARRY W. ELLIOTT,

Plaintiff,

vs.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Defendant.

Summons.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

JOSEPH SCOTT,
Plaintiff's Attorney.

The President of the United States of America,
GREETING: To American Surety Company
of New York, a Corporation, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR
and answer the Complaint in an action entitled as
above, brought against you in the Southern Division
of the United States District Court for the Northern
District of California, Second Division, within ten
days after the service on you of this Summons—if
served within this county; or within thirty days if
served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any moneys or damages demanded in the Complaint, as arising upon contract, or he will apply to the Court for any other relief demanded in the Complaint.

WITNESS, the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 13th day of September, in the year of our Lord one thousand nine hundred and twenty and of our In-

dependence the one hundred and forty-fourth.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [6]

(Marshal's Return on Summons.)

United States Marshal's Office,

Northern District of California.

I hereby certify that I received the within writ on the 13th day of Sept., 1920, and personally served the same on the 13th day of Sept., 1920, on American Surety Co. of N. Y., a foreign corporation, by handing to and leaving with R. D. Weldon, who is the person designated by the defendant under the statutes of California as the person upon whom all legal process is to be served in matters affecting Amer. Surety Co., a corporation, in the State of California, a true and attested copy, together with copy of complaint attached thereto, in the City and County of San Francisco, in said district.

Dated: San Francisco, California, Sept. 13th, 1920.

J. B. HOLOHAN,

United States Marshal.

By Thos. F. Mulhall,

Deputy.

[Endorsed]: Filed Sept. 16, 1920. Walter B. Maling, Clerk. [7]

(Title of Court and Cause.)

Demurrer.

Now comes defendant above named and demurring to plaintiff's complaint on file herein as grounds of demurrer specifies:

I.

That said complaint does not state facts sufficient to constitute a cause of action against said defendant.

II.

That it appears from said complaint that this Court has no jurisdiction of defendant, and in this it affirmatively appears therefrom that the cause of action stated or attempted to be stated is one which will not lie against this defendant as surety, but, on the contrary, is one which will lie alone against said sheriff himself as principal, or persons or officers other than this defendant.

III.

That said complaint is uncertain in this, that it does not appear therein nor can it be ascertained therefrom whether said alleged arrest or imprisonment was made by said sheriff in obedience to a valid or any warrant delivered to him.

IV.

That said complaint is uncertain in this, that it does not appear therein nor can it be ascertained therefrom whether or not said alleged arrest or imprisonment was made pursuant to a warrant duly issued in accordance with law.

V.

That said complaint is uncertain in this, that it does not appear therein nor can it be ascertained therefrom whether or not said alleged arrest or imprisonment was made by said sheriff by reason of said sheriff having reasonable cause for [8] believing said felony referred to in said complaint had been committed by plaintiff.

VI.

That said complaint is uncertain in this, that it does not appear therein nor can it be ascertained therefrom whether or not said alleged arrest or imprisonment was made by said sheriff upon a charge made upon reasonable cause of the commission of a felony.

VII.

That said complaint is uncertain in this, that it does not appear therein nor can it be ascertained therefrom whether or not said alleged arrest or imprisonment was made by said sheriff acting in his official capacity in the line of his duty, or by said sheriff as an individual.

WHEREFORE, defendant prays that it may go hence dismissed with costs of suit.

Dated: October 2d, 1920.

CREED, JONES & DAHL and
CHARLES A. SHURTLEFF and
J. G. DE FOREST,
Attorneys for Defendant.

[Endorsed]. Filed Oct. 2, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [9]

At a stated term, to wit, the July term, A. D. 1920, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 18th day of October, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this Court.

No. 16,439.

HARRY W. ELLIOTT,

vs.

AMERICAN SURETY CO. OF N. Y.

Minutes of Court—October 18, 1920—Order Overruling Demurrer.

Defendant's demurrer to complaint came on to be heard and after arguments was submitted and it was ordered that said demurrer be, and the same is hereby, overruled. [10]

(Title of Court and Cause.)

Answer.

Now comes defendant American Surety Company of New York, a corporation, and answering plaintiff's complaint on file, herein admits, denies and alleges as follows:

I.

Denies that the matter in controversy, exclusive of interest and costs, or otherwise, exceeds the sum of Three Thousand Dollars (\$3,000.00), or any other sum, by reason of alleged damages suffered by plaintiff by reason of the alleged acts of Richard R. Veale, or otherwise.

II.

Denies that on the 17th day of September 1919, at Antioch, in the County of Contra Costa, State of California, or at any other time or place, or at all, the said Richard R. Veale as sheriff, informed plaintiff that he, said Richard R. Veale, as sheriff, had reasonable cause to believe that plaintiff had committed the crime of murder, or any other crime or offense.

Denies that said Richard R. Veale, as sheriff, ever, or at any time or place, or at all, by the use of force or in the presence of divers or sundry or any good or any people, or at all, arrested plaintiff.

Denies that said Richard R. Veale, as sheriff, by force or in any other manner, then or there, or at any time or place, or at all, compelled plaintiff, in the presence of divers or sundry or any good or any people, or in the presence of any people, or at all, to go with him, or with anyone else, or at all to the County Jail, or any jail, in the City of Martinez, County of Contra Costa, State of California, or elsewhere, or at all.

Denies that said Richard R. Veale, as sheriff, then or there, or at any time or place, caused plaintiff to be incarcerated or [11] detained in the

county or any jail in the City of Martinez, County of Contra Costa, State of California, or elsewhere, or at all, on a purported charge of murder, or any other crime, or at all.

Defendant has no information or belief upon the subject sufficient to enable it to answer the following allegations contained in paragraph VII of plaintiff's complaint, to wit:

“That immediately upon said arrest said plaintiff protested his innocence and informed said Richard R. Veale as such sheriff, that he was not the person wanted for said charge, that he was not in the town of Pittsburg, County of Contra Costa, State of California, on said 9th day of September, 1919, at the time when said murder was committed, but was on said day, at the time said murder was committed, in the City of San Francisco, State of California; that he was not guilty of murder or any other felony committed on said 9th day of September 1919, or on any other day, in the town of Pittsburg, County of Contra Costa, State of California, or in any other town or place.”

And, placing its denial upon that ground,—

Denies that immediately upon said alleged arrest, or at any time, said plaintiff protested his innocence, or informed said Richard R. Veale, as such sheriff, or otherwise, that he was not the person wanted for said charge, or that he was not in the town of Pittsburg, County of Contra Costa, State of California, on said 9th day of September 1919, at the time when said murder was committed, or

that he was, on said day, at the time said murder was committed, in the City of San Francisco, State of California, or that he was not guilty of murder, or any other felony committed on said 9th day of September 1919, or on any other day, in the Town of Pittsburg, County of Contra Costa, State of California, or in any other town or place.

Denies that said Richard R. Veale, as such sheriff, then or there forcibly, or at all, kept said plaintiff in his or any custody, or so or otherwise detained or restrained or imprisoned or [12] deprived plaintiff of his liberty, for the space of twelve days, or for any period whatever, and denies that said Richard R. Veale, as such sheriff, failed or refused or neglected to release defendant either with or without bail.

Denies that during the period from the 17th day of September 1919, until the 24th day of September 1919, or during any time whatever, said Richard R. Veale, as sheriff, failed or refused or neglected to take plaintiff before a magistrate as required by law or otherwise.

Denies that on the 24th day of September, 1919, said Richard R. Veale, as such sheriff, took said plaintiff before a committing magistrate and caused an information to be filed against said plaintiff, and that plaintiff was thereupon held in the custody of said Richard R. Veale as such sheriff, or detained or restrained or imprisoned or forcibly kept or deprived of his liberty until the 29th day of September, 1919, by said Richard R. Veale as such sheriff.

Admits that said crime of murder was not committed or claimed to have been committed in the presence of said Richard R. Veale as such sheriff, but denies that said Richard R. Veale as such sheriff, so or at all arrested or imprisoned said plaintiff.

III.

Denies that by reason of said alleged or any imprisonment or alleged restraint of his liberty said plaintiff was injured in his good name and reputation, or good name or reputation, and subjected to shame, or subjected to shame and disgrace and humiliation, or shame or disgrace or humiliation, before the citizens of said County of Contra Costa, State of California, and or any other counties in said state, or before any citizens or persons whatsoever, and among his friends and acquaintances, or among his friends or acquaintances, or at all.

Denies that plaintiff suffered greatly or at all in mind and [13] body, or mind or body, by reason of the alleged shame and disgrace and humiliation, or shame or disgrace or humiliation of said alleged arrest and imprisonment, or arrest or imprisonment.

IV.

Denies that plaintiff has been damaged in the sum of Thirty Thousand Dollars (\$30,000.00), or in any sum whatever, or at all, by reason of any act or omission of said Richard R. Veale, as sheriff, or of this defendant.

And for a further and separate and affirmative defense to the complaint of plaintiff, this defendant

upon its information and belief alleges:

That Joseph Minetti was found murdered on September 10th, 1919, on the highway leading from Pittsburg south to Nortonville, in said 6th Judicial Township of Contra Costa County, and from all appearances the murder had been committed on the previous night. That on the 10th day of September, 1919, W. J. McDermott, as such constable of said 6th Judicial Township, for good, sufficient and probable cause, swore to a complaint before James Fitzgerald, Justice of the Peace in and for the 6th Judicial Township, charging unknown persons under the fictitious names of John Doe, Richard Roe, John Black, Jane Doe and Sarah Roe with a felony, to wit: the crime of murder of said Joseph Minetti; that thereafter and on September 10th 1919, and upon the said Complaint, the said James Fitzgerald, as such Justice of the Peace, issued a warrant in due and legal form directed to any sheriff, marshal or policeman in the state, for the arrest of the said unknown persons under the fictitious names of John Doe, Richard Roe, John Black, Jane Doe and Sarah Roe.

That thereafter the said Richard R. Veale, as sheriff of the County of Contra Costa, and the said William N. Veale, who was during all times herein mentioned the duly appointed, qualified [14] and acting deputy sheriff of the County of Contra Costa, investigated the murder of said Joseph Minetti and were informed and from such information believed:

That prior to his said death the said Minetti had

kept a saloon at Pittsburg, California, which was the resort of persons of questionable character, especially dissolute women and other persons connected with the illicit drug trade, and particularly associated with one Al Ross, living at Antioch, California, who kept a saloon there and had been shortly before charged with, tried and acquitted of the murder of a man found dead at the foot of the stairs of said Ross' residence at Antioch, and who had more recently been in trouble with the county and state officers arising out of such trade in illicit drugs, and also with the said plaintiff, Harry W. Elliott, who, although reputed to be a man of means, had at various times up to the death of said Minetti been a barkeeper in said Ross' saloon and had been living in an ark on the waterfront at Antioch for some months prior thereto, and that the circumstances indicated that said Elliott was connected with said illicit sale of illicit drugs; that the said Minetti shortly prior to his death, had furnished bail in the sum of one thousand dollars for the said Ross when arrested for the sale of drugs; that the said Elliott, Minetti and Ross were associated in some way in such trade in illicit drugs; that about four o'clock P. M. on the day of the death of the said Minetti, the said Elliott and the said Ross were at said Minetti's saloon at Pittsburg; that the said Minetti then and thereafter up to the time of his death had with him a large sum of money; that subsequently and at about 8:50 o'clock P. M. on said day the said Elliott was seen in the back seat of an automobile then and there

driven by the said Minetti; that the said Minetti at or about 9:45 P. M. on that evening was shot in the back of the head twice while driving said automobile, from which wounds he died, and that, [15] when found on the next morning, he was still in said automobile seated at the wheel, and said machine was still in high gear with the lights burning and headed towards the town of Antioch; that on that evening two dissolute women who had been frequent companions of said Ross, Elliott and Minetti disappeared and their whereabouts could not be ascertained for about a week; that prior to that date the said Elliott had frequently made trips to San Francisco returning to Antioch within twenty-four hours, but that on the evening of the murder of the said Minetti said Elliott disappeared from Antioch and could not thereafter be found until September 17th, 1919; that during said time various parcels of mail came to him at Antioch in care of the said Ross, but that inquiry of the said Ross and from the known associates of said Elliott failed to give any information as to the whereabouts of said Elliott; that a search in the meantime had been made in San Francisco for the said Elliott and elsewhere according to all information which said authorities could get, but to no avail; that inquiries had been made of the said Ross as to the whereabouts of said Elliott, but that no definite information could be obtained from him; that the said authorities believed that Ross was in communication with the said Elliott concerning the murder of the said Minetti; that about 2 A. M. on

the morning of September 17, 1919, the said Elliott returned to Antioch by steamer and went immediately to the house of the said Ross and remained there until about 5 A. M. of the same day, when he left Ross' house and returned to his own ark; that the acts of said Elliott were such as to arouse the suspicion of the said sheriff and his deputies, and to cause him verily to believe that the said plaintiff was connected with the murder or had actually murdered the said Minetti; that from the date of the murder of the said Minetti up to said 17th day of September, 1919, said sheriff and his said deputies had been in constant communication [16] with the office of the district attorney of the County of Contra Costa, and had kept them informed of his search for the murderer of the said Minetti and for the said Elliott and of said facts concerning said Elliott, and, during all of said times and up to and including the arrest of said Elliott, had been acting upon the advice of the said district attorney; that the said William N. Veale, deputy sheriff, upon being informed of the return of the said Elliott, under conditions aforesaid, went to Antioch and at 6:30 A. M. of September 17th, 1919, aroused the said Elliott and inquired of him as to his previous whereabouts; that the said Elliott stated that he had been at Antioch and Pittsburg at various times, but at different hours from the information then held by the said sheriff and his deputies; that the said Elliott stated to said officers that he had been advised by the said Ross of the murder of the said Minetti, and that he, Elliott, should immediately

return to Antioch, although to said officers the said Ross had disclaimed any knowledge of the said Elliott's whereabouts; that the said sheriff and his said deputies verily believed that the said plaintiff had either murdered or had some connection with the murder of the said Minetti, and acting upon such information and belief and by and with the consent of the said district attorney of the County of Contra Costa, and believing that he had reasonable cause to believe that said plaintiff had committed such felony and under and by virtue of said warrant for the arrest of one John Doe for the murder of said Minetti, thereupon arrested the said Elliott for the murder of said Minetti; that he thereupon took the said Elliott to the scene of the said murder at Pittsburg and told him that the warrant for the arrest of the murderer had been issued in said 6th Judicial Township and that in all probability they could not reach the justice of the peace of said township for some hours, and that he was entitled to be taken before said justice of the peace on that day; that the said Elliott then informed the [17] said deputy sheriff that he did not want to go into court until he had seen his lawyer, and, with the consent of said Elliott, said deputy sheriff then took the said Elliott to the county jail at Martinez; that upon their arrival at Martinez, the said Elliott was shortly thereafter visited by A. F. Bray, an attorney at law, who had been notified by telephone by the said Ross of the said Elliott's arrest and requested by the said Ross to visit the said Elliott; that the said Elliott and

said A. F. Bray then and there conferred; that the said Elliott and his attorney, A. F. Bray, then representing him, and the district attorney of the County of Contra Costa thereupon conferred together as to the time when the said Elliott should be taken before the justice of the peace of the said 6th Judicial Township; that it was then agreed by the said Elliott, his said attorney and the said district attorney, that the said Elliott should not be taken before said justice of the peace of the 6th Judicial Township until such time as the said Elliott had an opportunity to come to San Francisco and show the officers where he had spent his time while absent from Antioch; that, by the request of the said Elliott, A. F. Bray, his attorney, and the consent of the district attorney, it was agreed that the said Elliott should be taken before the justice of the peace of the said 6th Judicial Township on September 24th, 1919, on which date he was so taken before said justice of the peace with his said attorney and informed of his rights as provided by law, and then and there by the consent and at the request of said Elliott his preliminary examination was continued to and set for September 29th, 1919, and said plaintiff was thereupon remanded to the custody of said sheriff without bail and was thereupon returned to said county jail at Martinez, and there held under such order of said justice of the peace until September 29th, 1919, on which date his preliminary examination was held before said justice of the peace, said Elliott, then and there being represented by attorneys of his own choosing

and at the conclusion of said preliminary examination [18] he was discharged from custody.

The said sheriff, deputy sheriff, constable and justice of the peace acting as aforesaid by and with the advice and consent of the said district attorney of the County of Contra Costa had reasonable and probable cause to believe, and did believe, that the plaintiff did commit or had been connected with the murder of the said Minetti, and that all said acts of the said R. R. Veale as such sheriff and said William M. Veale as such deputy sheriff were done and had while acting under such belief and by and with the consent of the said district attorney and with probable and reasonable cause and in the lawful and reasonable performance of their duties as such respective officials and under lawful authority and under process and orders regular on their face and issued by competent authority, and were without any malice on the part of any of them, and that the actions of the said Elliott were such as to reasonably and probably arouse the suspicions of the said sheriff and said deputy sheriff and of any reasonable man or men that the said Elliott was either the murderer of or implicated in the murder of the said Minetti, and that said acts are the same acts of which plaintiff complains.

WHEREFORE the said defendant prays that said plaintiff take nothing as against this defendant, but that said defendant may have judgment against

the said plaintiff for its costs incurred herein, and for general relief.

CREED, JONES & DALL,
CHARLES A. SHURTLEFF,
J. G. DE FOREST,
Attorneys for Said Defendant. [19]

State of California,
City and County of San Francisco,—ss.

R. D. Weldon, being duly sworn, deposes and says: That he is an officer, to wit, the Resident Vice-President of the American Surety Company of New York, defendant in the above and foregoing entitled action; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true; that he makes this verification for and on behalf of said defendant, the American Surety Company of New York.

R. D. WELDON.

Subscribed and sworn to before me, this 19th day of November, 1920.

[Seal] JOHN McCALLAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Nov. 19, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

(Title of Court and Cause.)

Verdict.

We, the jury, find in favor of the defendant, *provide*, however, we award the plaintiff Seven Hundred and Fifty Dollars damages.

G. F. NEAL,
Foreman.

[Endorsed]: Filed Nov. 21, 1921. W. B. Maling,
Clerk. [21]

(Title of Court and Cause.)

Judgment on Verdict.

This cause having come on regularly for trial upon the 16th day of November, 1921, being a day in the November, 1921, term of said Court, before the Court and a jury of twelve men duly impaneled and sworn to try the issue joined herein; Joseph Scott, Benjamin L. McKinley and A. G. Ritter, Esqs., appearing as attorneys for plaintiff and M. R. Jones and J. G. DeForest, Esqrs., appearing as attorneys for defendant; and the trial having been proceeded with on the 17th, 18th and 21st days of November, in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after arguments by the attorneys and the instructions of the Court, having been submitted to the jury and the jury having subsequently rendered the following verdict which was ordered recorded,

namely: "We, the jury, find in favor of the defendant, *provide* however, we award the plaintiff Seven Hundred and Fifty Dollars damages. G. F. Neal, Foreman," and the Court having ordered that judgment be entered in favor of plaintiff in the sum of Seven Hundred Fifty (\$750.00) Dollars and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Harry W. Elliott, plaintiff, do have and recover of and from American Surety Company of New York, a corporation, the sum of Seven Hundred Fifty and no/100 (\$750.00) Dollars, together with his costs herein expended taxed at \$573.78.

Judgment entered November 21, 1921.

WALTER B. MALING,
Clerk.

A true copy.

[Seal] Attest: WALTER B. MALING,
Clerk.

[Endorsed]: Filed Nov. 21, 1921. Walter B. Maling, Clerk. [22]

(Title of Court and Cause.)

Certificate of Clerk U. S. District Court to Judgment-roll.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing papers

hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said District Court, this 21st day of November, 1921.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed November 21, 1921. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

At a stated term, to wit, the November term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom, in the City and County of San Francisco, on Monday, the 21st day of November, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable FRANK H. RUDKIN, District Judge for the Eastern District of Washington, designated to hold and holding this Court.

No. 16,439.

HARRY W. ELLIOTT

vs.

AMERICAN SURETY CO. of N. Y.

Minutes of Court—November 21, 1921—Order for Judgment, etc.

The parties and the jury being present as here-

tofore, the jurors were asked if they had agreed upon their verdict and they thereupon answered in the affirmative and returned a sealed verdict which was ordered opened and spread upon the minutes and which said verdict was in words and figures as follows, namely: "We, the jury, find in favor of the defendant, provided, however, we award the plaintiff Seven Hundred and Fifty Dollars damages. G. F. Neal, Foreman." Ordered that judgment be entered in favor of plaintiff in the sum of \$750.00 and for costs; to which verdict and order for judgment counsel for both sides duly excepted. Ordered that the jury be discharged. [24]

(Title of Court and Cause.)

Petition for New Trial.

Now comes the plaintiff and petitions and moves the above-entitled Court to vacate and set aside the verdict and judgment in the above-entitled action and grant a new trial of said cause and for grounds for said motion presents and shows to the Court the following:

1. Irregularity in the proceedings of the Court by which the plaintiff was prevented from having a fair trial.
2. Irregularity in the proceedings of the jury by which the plaintiff was prevented from having a fair trial.
3. Irregularity in the proceedings of adverse

party by which the plaintiff was prevented from having a fair trial.

4. Orders of the Court by which plaintiff was prevented from having a fair trial.

5. Misconduct of the jury.

6. Accident which ordinary prudence could not have guarded against.

7. Surprise which ordinary prudence could not have guarded against.

8. Newly discovered evidence, material for the plaintiff, which he could not with reasonable diligence have discovered and produced at the trial.

9. Excessively low damages appearing to have been given under the influence of passion or prejudice.

10. Insufficiency of the evidence to justify the verdict.

11. That the verdict is against law.

12. Error in law occurring at the trial.

13. Insufficiency of the evidence to justify the verdict in the following particulars:

(a) That the evidence is insufficient to show that the arrest of the plaintiff was lawful; [25]

(b) That the evidence is insufficient to show that probable cause existed for the arrest of the plaintiff;

(c) That the evidence is insufficient to show that the arresting officer had knowledge of or was in the possession of any fact or facts which warranted the arrest of the plaintiff upon the charge of murder or which constituted probable cause for such arrest;

(d) That the evidence is insufficient to show any

fact or facts which justified or warranted the arrest of said plaintiff without a warrant, or to show probable cause for such arrest without a warrant;

(e) That the evidence is insufficient to show any reason or excuse for the failure of the arresting officer to obtain a legal warrant for the arrest of said plaintiff, if probable cause existed for said arrest, prior to making said arrest;

(f) That the evidence is insufficient to show any justification for a verdict in so small an amount as seven hundred fifty (750) dollars; but, on the contrary, said evidence shows that the said plaintiff was entitled to a verdict for a sum greatly in excess thereof;

(g) That the evidence is insufficient to justify that purported portion of the verdict which seeks or attempts to find a verdict in favor of the defendant;

(h) That the evidence is insufficient to show that the plaintiff has not been damaged in an amount far in excess of seven hundred fifty (750) dollars;

(i) That the evidence is insufficient to show any waiver by the plaintiff of his right to be taken without unnecessary delay after his arrest before the nearest or most accessible magistrate in the County of Contra Costa and an information stating the charge against said plaintiff laid before such magistrate; [26]

(j) That the evidence is insufficient to show any reason or excuse for the failure of the arresting officer after arresting said plaintiff to take him without unnecessary delay before the nearest or

most accessible magistrate in the County of Contra Costa, and lay before such magistrate an information stating the charge against said plaintiff;

14. Error in law occurring at the trial in the following particulars:

(a) That the Court erroneously instructed the jury that the question of probable cause in this case, under the evidence, was one of fact for the jury to consider;

(b) That the Court erroneously refused to instruct the jury that as a matter of law there was not probable cause for the arrest of the plaintiff by the arresting officer;

(c) That the Court erroneously instructed the jury that if certain statements of facts in his charge set out were true, then there was reasonable cause for the arrest of said plaintiff upon the charge of having committed murder;

(d) That the Court erroneously instructed the jury that the right of the plaintiff to be taken before a magistrate without unnecessary delay was a personal right which may be waived and that if a waiver thereof was shown, it was a complete defense to the arresting officer for delay in taking the plaintiff before a magistrate;

(e) That the Court erroneously instructed the jury that if they found the arrest or detention, or both, of plaintiff were unlawful, then they could only allow actual damages and could not award punitive or exemplary damages;

(f) That the Court erroneously instructed the jury that the plaintiff must prove by a preponder-

ance of the evidence what his reputation was in the particulars for which he claims injury at the time of his arrest in the county in which he then [27] lived; and must also submit evidence satisfactory to the jury from which it can be inferred that his reputation at that time suffered injury;

(g) That the Court erroneously refused to give said instructions as were requested by the plaintiff and refused by the Court;

(h) Erroneous rulings by the Court sustaining objections made by the defendant to questions propounded by plaintiff's counsel to plaintiff as a witness and to which rulings exceptions were duly noted;

(i) Erroneous rulings by the Court overruling objections made by plaintiff's counsel to questions asked by defendant's counsel of plaintiff in cross-examination to which exceptions were duly noted;

(j) Erroneous rulings by the Court overruling objections made by plaintiff's counsel to questions asked by defendant's counsel of the witnesses R. R. Veale and William M. Veale and to which exceptions were duly noted;

(k) Erroneous rulings of the Court overruling objections by plaintiff's counsel to questions asked by defendant's counsel of the witness Jessie Renna and to which rulings exceptions were duly noted.

The papers upon which said application is to be made and said petition is to be heard are all the pleadings and papers on file and all the files and records in the above-entitled cause and the minutes

of the Court and affidavits that may be served and filed herein.

Dated: December 1, 1921.

CHALMER MUNDAY,

ALBERT PICARD,

Attorneys for Plaintiff. [28]

Receipt of copy of the within petition for new trial and copy of substitution of attorneys is hereby admitted this 1st day of December, 1921.

J. G. DE FOREST,

CREED, JONES & DALL,

Attorneys for Defendant.

[Endorsed]: Filed Dec. 1, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [29]

At a stated term, to wit, the November term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 19th day of December, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable FRANK H. RUDKIN, District Judge for the Eastern District of Washington, designated to hold and holding this Court.

No. 16,439.

HARRY W. ELLIOTT

vs.

AMERICAN SURETY CO.

Minutes of Court—December 19, 1921—Order Denying Petition for New Trial.

Plaintiff's petition for a new trial came on to be heard and after arguments being submitted, it was ordered that said petition for a new trial be and the same is hereby denied. [30]

(Title of Court and Cause.)

Petition for Writ of Error.

To the Above-entitled Court:

Now comes Harry W. Elliott, the plaintiff in the above-entitled cause, and feeling himself aggrieved by the verdict of the jury and the judgment of the above-entitled court entered therein on the 21st day of November, 1921, hereby petitions this Honorable Court for an order allowing him to prosecute a writ of error from the United States Circuit Court of Appeals of the Ninth Circuit to said United States District Court for the Northern District of California, Southern Division, on the ground that in said verdict and judgment and proceedings and prior thereto certain errors were committed to the prejudice of this plaintiff as will more fully appear from the assignment of errors filed with this petition.

WHEREFORE, this plaintiff prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors as complained of and that a transcript of the record, proceedings

and papers in this cause, duly authenticated, may be sent to said Circuit Court of Appeals.

ALBERT PICARD,
CHALMER MUNDAY,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 21, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [31]

(Title of Court and Cause.)

Assignment of Errors.

Now comes Harry W. Elliott, the plaintiff in error in the above-entitled cause, and in connection with his petition for a writ of error makes the following assignment of errors:

First: The Court erred in entering judgment in favor of plaintiff in the sum of seven hundred fifty (\$750.00) dollars on the verdict rendered herein, because;

- (a) The said verdict is inconsistent on its face;
- (b) The said verdict is not responsive to the issues formed by the pleadings;
- (c) The jury by which said cause was tried found for the defendant and at the same time found for the plaintiff on the same issues and the same evidence. It was thereby determined that plaintiff suffered no damages and at the same time plaintiff was awarded damages in the sum of seven hundred fifty (\$750.00) dollars for the same acts for which the said jury found for the defendant; which said sum of seven hundred fifty (\$750.00) dollars is nom-

inal in amount for the imprisonment of this plaintiff in error for a period of at least twelve days upon the charge of murder, as alleged in the complaint herein and admitted in the answer herein;

(d) The said verdict does not support a judgment.

Second: The Court erred in refusing to grant plaintiff in error a new trial, because,

(a) The jury by which said cause was tried by its verdict found for the defendant. It was thereby determined that R. R. Veale, the Sheriff of Contra Costa County, the officer for whom defendant in error was and is the surety, did not commit a trespass in the matter of falsely imprisoning plaintiff in error and at the same time plaintiff in error was awarded damages in the sum of seven [32] hundred fifty (\$750.00) dollars for the same false imprisonment which said sum is nominal in amount for the imprisonment of this plaintiff in error for a period of at least twelve days on a charge of murder as alleged in the complaint herein and admitted in the answer herein.

(b) Said verdict was and is inconsistent on its face and plaintiff in error is of right entitled to a new trial.

(c) Said verdict is not responsive to or determinative of the issues formed by the pleadings and plaintiff in error is entitled to have said issues clearly determined.

WHEREFORE, said plaintiff in error prays that the judgment of said District Court of the United

States be reversed, and that said Court be directed to grant a new trial of the said cause.

Dated: February 21, 1922.

CHALMER MUNDAY,
ALBERT PICARD,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 21, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [33]

(Title of Court and Cause.)

Order Allowing Writ of Error.

This 21st day of February, 1922, came plaintiff Harry W. Elliott, by his attorneys, and filed herein and presented to the Court his petition, praying for an allowance of a writ of error, an assignment of errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the plaintiff giving bond according to law in the sum of Three Hundred (\$300.00) Dollars, as security for costs on said writ of error.

WM. C. VAN FLEET,
Judge of the District Court.

[Endorsed]: Filed Feb. 21, 1922. W. B. Maling, Clerk. By. J. A. Schaertzer, Deputy Clerk. [34]

(Title of Court and Cause.)

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Harry W. Elliott, as principal, and National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and duly licensed to transact its business of suretyship in the State of California, as surety, are held and firmly bound unto American Surety Company of New York, the defendant in error, in the sum of Three Hundred Dollars, lawful money of the United States, to be paid to said defendant, its attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our heirs, executors and administrators by these presents.

Sealed with our seals and dated this 21st day of February, 1922.

WHEREAS, lately at the Southern Division of the United States District Court for the Northern District of California, Second Division, in a suit pending in said Court between Harry W. Elliott, plaintiff, and American Surety Company of New York, defendant, judgment was rendered in favor of plaintiff in the sum of Seven Hundred and Fifty Dollars; and

WHEREAS, the above-named plaintiff is dissatisfied with said judgment and has prosecuted a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the said United States District Court for the Northern District of California, Second Division, in the above-entitled cause;

NOW, THEREFORE, the condition of this obligation is such that if the said Harry W. Elliott shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain [35] in full force and effect.

HARRY W. ELLIOTT.

NATIONAL SURETY COMPANY.

By F. J. CRISP,
Resident Vice-president.

[Seal] By A. C. ROBESON,
Resident Assistant Secretary.

Approved as to form and sufficiency this 25th day of February, 1922.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed Feb. 25, 1922. Walter B. Maling, Clerk. [36]

(Title of Court and Cause.)

Praeceptum for Transcript of Record on Writ of Error.
To the Clerk of the Above-entitled Court:

You are hereby requested to prepare a transcript

of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to a writ of error herein and to include in such transcript of record the following papers:

1. The complaint.
2. The answer.
3. The verdict of the jury.
4. Judgment.
5. Motion or petition for a new trial.
6. Order denying motion for a new trial.
7. Petition for writ of error.
8. Assignment of errors.
9. Order directing writ of error.
10. Cost bond.
11. Praecipe for transcript.
12. Clerk's transcript.
13. All orders of Court, minute orders and matters and things contained in the judgment-roll.

ALBERT PICARD,
CHALMER MUNDAY,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 28, 1922, W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [37]

In the Southern Division of the United States
District Court, in and for the Northern District
of California, Second Division.

No. 16,439.

HARRY W. ELLIOTT,

Plaintiff,

vs.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Defendant.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

I, Walter B. Maling, Clerk of the District Court
of the United States, for the Northern District of
California, do hereby certify the foregoing thirty-
seven (37) pages, numbered from 1 to 37, inclusive,
to be a full, true and correct copy of the record and
proceedings as enumerated in the praecipe for
record on writ of error in the above-entitled cause,
as the same remains of record and on file in the
office of the clerk of said court, and that the same
constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing
return to writ of error is \$16.85; that said amount
was paid by the plaintiff, and that the original
writ of error and citation issued in said cause are
hereto annexed.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said District Court,

this 13th day of March, A. D. 1922.

[Seal] WALTER B. MÅLING,
Clerk United States District Court for the Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk. [38]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America,
to the Honorable, the Judges of the District
Court of the United States for the Northern
District of California, GREETING:

BECAUSE, in the record and proceedings, as also
in the rendition of the judgment of a plea which is
in the said District Court, before you, or some of
you, between Harry W. Elliott, plaintiff in error,
and American Surety Company of New York, de-
fendant in error, a manifest error hath happened,
to the great damage of the said Harry W. Elliott,
plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid in this behalf, do
command you, if judgment be therein given, that
then under your seal, distinctly and openly, you
send the record and proceedings aforesaid, with
all things concerning the same, to the United States
Circuit Court of Appeals for the Ninth Circuit,
together with this writ, so that you have the same

at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the 25th day of February, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,
United States District Judge. [39]

[Endorsed]: No. 16,439. United States District Court for the Northern District of California, Second Division. Harry W. Elliott, Plaintiff in Error, vs. American Surety Company of New York, Defendant in Error. Writ of Error. Filed Feb. 28, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Receipt of copy of within writ admitted this
28th day of February, 1922,

CREED, JONES & DALL,
J. G. DE FOREST,
Attorneys for Defendant in Error.

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk U. S. District Court for the Northern District
of California.

By J. A. Schaertzer,
Deputy Clerk. [40]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to American
Surety Company of New York, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the

Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Harry W. Elliott is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment herein rendered, as in the said writ of error mentioned, should not be corrected, any why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable ———, United States District Judge for the Northern District of California, Southern Division, this 25th day of February, A. D. 1922.

WM. C. VAN FLEET,
United States District Judge. [41]

[Endorsed]: No. 16,439. United States District Court for the Northern District of California, Second Division. Harry W. Elliott, Plaintiff in Error, vs. American Surety Company of New York, Defendant in Error. Citation on Writ of Error. Filed Feb. 28, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Receipt of copy of within citation admitted this 28th day of February, 1922.

CREED, JONES & DALL,
J. G. DE FOREST,
Attorneys for Deft. in Error.

[Endorsed]: No. 3842. United States Circuit Court of Appeals for the Ninth Circuit. Harry W. Elliott, Plaintiff in Error, vs. American Surety

Company of New York, a Corporation, Defendant
in Error. Transcript of Record. Upon Writ of
Error to the Southern Division of the United States
District Court of the Northern District of Cali-
fornia, Second Division.

Filed March 14, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.